

*Law Offices*  
*Dubow, Smith & Marothy*  
*860 Grand Concourse, Suite 1-N*  
*Bronx, New York 10451*

CHRISTOPHER A. MAROTHY

PARALEGAL

DEBBIE ZAPATA

LEGAL SECRETARY

BERTHA BETETA

TELEPHONE (718) 402-1990

FACSIMILE (718) 993-3543

(NOT FOR LEGAL SERVICE)

OF COUNSEL

LOUIS DUBOW (1908-1995)

MICHAEL DUBOW

BRUCE SMITH

HENRY I. SPERLING (RETIRED)

STEVEN J. MINES

DAVID E. THOMAS

MATTHEW REGO

KARIN Z. MIRTISOPOULOS

July 18, 2011

Via ECF

Hon. William D. Wall  
United States Magistrate Judge  
Eastern District of New York  
100 Federal Plaza, P.O. Box 9014  
Central Islip, New York 11722-9014

Re: *Shakespeare v. NCR Corp.*  
Case No.: 2:IO-cv-02052-ADS -WDW

Dear Judge Wall:

I am writing on behalf of plaintiff herein in opposition to defendant NCR Corporation's letter motion for a protective Order. Plaintiff Kimberli Shakespeare was deposed on the morning of July 15, 2011. Up until July 14, 2011 it was our understanding that NCR would produce a witness with knowledge of the facts relevant to the instant matter on the afternoon of July 15, 2011. Only on July 14 did I learn that NCR would not be producing a witness and would, instead, be moving for a protective Order. At this time plaintiff respectfully requests that the Court direct NCR to produce a witness with knowledge by a date certain.

This is a case where plaintiff's right index finger was grabbed by the "shutter" adjacent to a cash dispensing mechanism of an automatic teller machine that was manufactured, maintained and serviced by NCR. Annexed hereto as exhibit A is a copy of NCR Corporation's responses to plaintiff's first set of interrogatories. The Court's attention is respectfully drawn to the answer to interrogatory number 25, which indicates that the "shutter is a component of the parent ATM, not the cash dispenser module." The response goes on to discuss the manner in which the ATM monitors the opening and closing of the shutter.

In light of the forgoing, it is respectfully submitted, that NCR is disingenuous when it claims that it cannot produce an appropriate witness because, in effect, it does not know the subject matter to be covered. Plaintiff did, in the first instance, designate Graeme Smith as the witness it wanted to depose. Mr. Smith had been identified as the source of the information set for in interrogatory number 25 and four other interrogatories. At the time he was designated, however, plaintiff was unaware that he was outside the continental United States, making his potential deposition not

economically feasible. Once it was revealed that Mr. Smith was in the United Kingdom both I and my associate, Jean Kestel, Esq., indicated to Joseph Geoghegan, Esq. and Donald Frechette, Esq. on behalf of NCR that we wanted to depose a witness on behalf of NCR with knowledge of the operation of the ATM. I must take issue with Mr. Geoghegan's contention that the first notice that plaintiff sought to depose someone other than Mr. Smith was July 8. In fact, there had been multiple discussions about a different NCR witness and, indeed, plaintiff was scheduled for the morning of July 15 explicitly so that an NCR witness could be deposed on the afternoon of that date.

In light of the forgoing we respectfully request that the Court deny NCR Corporation's motion for a protective Order and direct that NCR produce a witness with knowledge of the design and operation of the subject ATM.

As always, the Court's courtesy and cooperation are greatly appreciated.

Very truly yours,

DUBOW, SMITH & MAROTHY

A handwritten signature in black ink, appearing to read 'Steven J. Mines', is written over the printed name.

by: Steven J. Mines

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2011, the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this document through the court's CM/ECF System.



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Steven J. Mines, Esq. (SM5422)  
Dubow, Smith & Marothy  
860 Grand Concourse, Suite 1-N  
Bronx, NY 10451  
(718) 402-1990  
(866) 605-0799 (Fax)  
[stevenjmines@gmail.com](mailto:stevenjmines@gmail.com)